IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8214 OF 2005

Mujahid Barkatulla Makki.. .. Petitioner.

vs.

Jitendra Anantrao Deokar

& Anr. .. Respondents.

Mr. S.R. Ganbavale for petitioner.

Ms. V.S. Mhaispurkar for respondents.

CORAM : S.U. KAMDAR, J.

DATE : 6th December, 2005.

P.C.:

. The present writ petition challenges the order dated 1.7.2005 passed by the appellate court in Misc. Civil Appeal No. 56 of 2005. By the impugned order the appellate Court has confirmed the interim order passed by the trial Court only in respect of a portion of the land which is existing road on West and South of suit plot No. B and C. By the injunction order the trial Court has restrained the petitioner from carrying out the blasting, quarrying operations or carrying out any digging operations in respect of the said portion of

the land which is the existing road. While passing the aforesaid order, the appellate Court has considered the material and has in fact found that the said road does not form part of the land which has been allotted by the government for quarrying operations. In my opinion trial court has rightly considered the boundaries of sanctioned and approved plan to come to the conclusion that area of road do not fall within the boundaries of the plot which is given for quarrying operations by the government and thus necessary injunction is granted to prevent the encroachment on the road for quarrying operations. However, in respect of the remaining portion of the land the injunction order has ben vacated which is a subject matter of challenge in the present petition. In so far as the said portion of the land is concerned the appellate court has rightly held that merely because Lease Deed is not registered is not sufficient to grant an injunction. It is because the lease is between the respondents and the government and the State Government has not challenged the said allotment. In that light of the matter, it is not open to the petitioner to challenge the rights of the respondents merely on the ground of non-registration of Lease Deed. I do not find any error apparent on the face of the record or any perversity in the order passed in the present proceeding which is interlocutory in nature to interfere with in writ jurisdiction under Article

227 of the Constitution of India. Petition dismissed. No order as to costs. All the observations in the impugned order as well as in the present order are prima facie and the trial will not be affected by the observations made therein.